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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,663	12/19/2001	Steven A. Blankenship	P-1106	6529

7590

07/28/2004

Scott R. Cox  
Suite 2200  
400 West Market St.  
Louisville, KY 40202

EXAMINER
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HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED:

Below is a communication from the EXAMINER in charge of this application  
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07(f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (see NOTE below);
  - (b) ☐ they raise the issue of new matter. (see NOTE below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE:

The amounts and ratios of claims 6 and 10 do not jibe and thus combining both into claim 1  
resolves the 2nd paragraph issues.

4. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
5. ☒ Newly proposed or amended claim(s) 22 incorporated into claim 1 would be entered ~~allowable~~ if submitted in a separate, timely filed amendment ~~canceling the non-allowable claim(s)~~.
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: \_\_\_\_\_
- Claim(s) objected to: \_\_\_\_\_
- Claim(s) rejected: 1-14
- Claim(s) withdrawn from consideration: \_\_\_\_\_
9. ☐ The proposed drawing correction filed on \_\_\_\_\_ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
11. ☐ Other: \_\_\_\_\_

STUART L. HENDRICKSON  
PATENT EXAMINER

SC

Art Unit: 1754

Applicants are now asserting that the composition- rather than the reduction and storage and carrier previously argued- makes the claims allowable. However, in view of the fact that applicants purchased the catalyst means that they did not formulate it and thus this argument is not persuasive. The claim to the catalyst is clearly not allowable. Wood **suggests** and **teaches** the reduction and storage. It is not necessary for the reference to 'require' it- especially since the rejection is made under '103. The argument that it is expensive to ship a product under nitrogen and thus is not obvious is not persuasive, as this fact would be readily apparent. The extra cost is offset by the fact that the catalyst arrives fresh and ready- and the extra shipping/processing cost can be passed to the ultimate user. This is simply an economic tradeoff (paying more for a higher quality product) and is routine and obvious. Furthermore, this is taught by Wood. The allegation that the patentability of the Wood patent rests in their support material is irrelevant. The tables in the specification do not support patentability for a claim as broad as is being pursued, as the claims are not of the narrow scope alleged to be critical.